

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Joseph Byrne

v.

Civil No. 07-cv-43-JD

Brunswick Corporation and
Ernest G. Gillan, Sr. d/b/a Gillan Marine

O R D E R

Joseph Byrne filed a motion for leave to amend his complaint after two defendants filed their answers and while motions to dismiss for lack of jurisdiction, filed by the other two defendants, were pending. Byrne filed a notice of voluntary dismissal of his claims against Whipple Industries, Inc. before Whipple filed its answer. See Fed. R. Civ. P. 41(a)(i). The court granted the motion to dismiss filed by Frank Brancaccio. Therefore, the remaining defendants are Brunswick Corporation and Ernest G. Gillan, d/b/a Gillan Marine, both of whom have filed answers to the original complaint.

In his motion for leave to amend, Byrne represents that Gillan assented to the motion, and Gillan has filed an answer to the amended complaint. Byrne stated that he was unable to obtain assent from Brunswick. Brunswick, however, has not responded to Byrne's motion for leave to amend.

As neither of the remaining defendants objects to granting

leave to Byrne to file the amended complaint, the motion is granted. See Fed. R. Civ. P. 15(a). Because Brancaccio and Whipple have already been dismissed from the case, however, the amended complaint does not reinitiate claims against them. Brancaccio and Whipple are not parties in this case.

Conclusion

For the foregoing reasons, the plaintiff's motion for leave to amend (document no. 31) is granted except that defendants Frank Brancaccio, d/b/a Frank's Marine, and Whipple Industries, Inc., have been dismissed from the case and, therefore, are not parties despite the allegations pertaining to them in the amended complaint.

SO ORDERED

/s/ Joseph A. DiClerico, Jr.
Joseph A. DiClerico, Jr.
United States District Judge

July 9, 2007

cc: James M. McNamee, Jr., Esq.
George R. Moore, Esq.
John A. Lassey, Esq.